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Pennsylvania Health Care Association

315 North Second Street • Harrisburg, PA 17101
(717) 221-1800 • FAX (717) 221-8687 • www.phca.org

May 16, 2012

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Mr. Silvan Lutkewitte, III, Chairman
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, Pa. 17101

Re: Pennsylvania Department of Public Welfare Final-Form Rulemaking #14-524

Dear Chairman Lutkewitte:

Please accept this comment letter submitted on behalf of the Pennsylvania Health Care Association (PHCA) regarding the Department of Public Welfare's (Department) Final-Form Rulemaking entitled "Participation Review Process for Medical Assistance Nursing Facilities." PHCA represents approximately 360 long term care and senior service providers throughout Pennsylvania. Our members offer care and services along the full continuum, from retirement housing with services, nursing centers to assisted living residents to personal care home, and include both proprietary and non-profit organizations.

PHCA commends the Department on the changes made from the proposed rulemaking to the final-form rulemaking; the final-form rulemaking is a vast improvement from the proposed rulemaking. Although PHCA is generally supportive of the final-form rulemaking we are not fully comfortable that the Department will implement the regulatory provisions in a manner that allows nursing homes the ability to make modifications to their physical plant to respond to consumer demand for a friendlier homelike environment, provide the highest quality of care and meet regulatory expectations.

PHCA would like the opportunity to work with the Department on the procedures and regulatory interpretations it will apply to bed requests subject to review under the regulatory provisions contained in the final-form regulation. Some of the provision we would like to address are highlighted below.

Bed Transfer Requests:

Is it the intent of the Department to require a "feasibility or market study" for a bed transfer request? PHCA believes that the Department can make an informed decision on a bed transfer request based on the documentation submitted in support of the bed transfer request. A "feasibility or market study" is costly to the nursing home and will offer minimal value in supporting the merits of the bed transfer project.

Under the bed transfer request criteria it states: "Both the surrendering provider and the receiving provider agree that the new or additional beds at the receiving provider shall be licensed, MA-certified and available for immediate occupancy before the surrendering provider decertifies and closes any beds." Is it the intent of the Department to require that the beds at both the surrendering and receiving facilities be licensed and MA-certified for a period of time or is it the intent that the new beds be licensed and MA-certified on the same day that the transferred beds be de-licensed and de-certified?

Peer group changes. It has been an ongoing question from PHCA how the Department intends to implement this provision, what specifically will be considered in making this determination. Although the Department addressed peer group changes in the preamble, PHCA believes that there are additional considerations that should be made related to this provision and we would like the opportunity to discuss with the Department.

Transfer of capital component payments. It has been an ongoing question from PHCA how the Department intends to implement this provision. We recognize that in the preamble the Department indicates that there is a process outside of the bed request process related to capital component payments. PHCA would like to better understand how the two processes will interact and whether the decisions will be made simultaneously or on separate tracks.

Timelines:

The regulation provides a 3-year window for completion of bed request projects unless there is an agreement between the provider and the Department for a different date. PHCA believes that 3-years to complete a project is an adequate timeframe. If the provider needs additional time it is our recommendation that the Department only agree to an extended timeframe if the provider has made a good faith effort to meet the 3-year timeframe and for reasons beyond their control will not be able to meet that timeframe. The concern is that the Department is relying on the addition of those beds when reviewing subsequent bed requests and unreasonably extending the timeframes could create access barriers if beds are tied up in approvals and not implemented.

Website Postings

In an effort to create an environment of full disclosure PHCA suggests that the information posted on the Department's website regarding bed requests include more summary information regarding the proposed projects, such as location, source of beds (if bed transfer), number of existing beds if existing, etc. We would like the opportunity to discuss this further with the Department.

Effective Date:

According to the preamble the effective date of the final-form rulemaking will be the date of publication. PHCA would like to understand how the regulatory provisions will be applied to bed requests pending with the Department prior to the date of publication of the final-form rulemaking.

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Thank you for the opportunity to provide comments on this final-form rulemaking. PHCA looks forward to working with the Department to address the procedural issues highlighted above. If you have any questions regarding our comments please contact my office at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Gail Weidman".

Gail Weidman
Director of Policy & Regulatory Affairs